

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:06CR19
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM AND ORDER
)	
JUAN VARGAS,)	
)	
Defendant.)	

This matter is before the Court on the motion filed by the Defendant, Juan Vargas, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (“§ 2255 motion”) (Filing No. 231).

Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Judgment was entered on November 8, 2006. The Defendant did not file a direct appeal until January 31, 2011. The Defendant filed a notice of appeal from the order in which the Court determined the notice of appeal was untimely. However, on May 10, 2011, the Eighth Circuit Court of Appeals dismissed the appeal for lack of prosecution. The Defendant then filed a motion for leave to proceed in forma pauperis without any accompanying filing, which the Court denied on June 21, 2011. On August 8, 2011, the § 2255 motion followed.

Under 28 U.S.C. § 2255, a defendant has one year to file a § 2255 motion from “the date on which the judgment of conviction becomes final.” In this case, the one-year period began to run on November 27, 2006, the last day the Defendant could have timely filed a direct appeal. Fed. R. App. P. 4(b)(1)(A)(i), 26(a)(2) & 26(c) (2006); *Murray v. United States*, 313 Fed. Appx. 924, at **1 (8th Cir. Mar. 10, 2009) (conviction became final when the time for filing a notice of appeal expired). Because the Defendant’s § 2255 motion was filed on August 8, 2011, the motion is untimely.

IT IS ORDERED:

1. The Court has completed the initial review of the Defendant’s motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Filing No. 231);
2. Upon initial review, the Court summarily denies the Defendant’s § 2255 motion as untimely, and therefore the motion (Filing No. 231) is summarily denied;
3. A separate Judgment will be issued denying the § 2255 motion; and
4. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 22nd day of August, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge